

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, }

5 Government, } No. 08 CR 888
6 vs. }

7 ROD BLAGOJEVICH, ROBERT } Chicago, Illinois
8 BLAGOJEVICH, WILLIAM F. CELLINI } September 22, 2009
9 Defendants. }) 11:06 o'clock a.m.

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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1 Appearance (continued:)

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1 (The following proceedings were had in open
2 court:)

3 THE CLERK: 2008 CR 888, United States versus
4 Blagojevich et al.

:06AM

5 MR. SCHAR: Good morning, Judge.

6 Reid Schar, Chris Niewoehner, Carrie Hamilton
7 on behalf of the United States.

8 MR. ETTINGER: Good morning, Your Honor.

:07AM

9 Michael Ettinger on behalf of Rob
10 Blagojevich.

11 MR. ACKERMAN: Allan Ackerman one of the
12 attorneys for Rod Blagojevich.

13 MR. WEBB: Your Honor, Dan Web on behalf of
14 Mr. Cellini.

:07AM

15 MR. GILLESPIE: Terry Gillespie as well on
16 behalf of Mr. Cellini.

17 MR. ADAM, JR.: Sam Adam, Jr., on behalf of
18 Rod Blagojevich, Your Honor.

:07AM

19 MR. WEBB: Sheldon Sorosky, and also Sam
20 Adam, Sr., on behalf Rod Blagojevich.

21 MR. SCHAR: Judge, the only business that the
22 government has to take care of this morning is move
23 to dismiss Counts 1, 13, 14 and 15 as to defendant
24 Christopher Kelly.

:07AM

25 THE COURT: On suggestion of death?

1 MR. SCHAR: Yes, Judge.

2 THE COURT: Motion is granted.

3 MR. SCHAR: Otherwise, Judge, I know that we
4 have filed a jury questionnaire with chambers per
5 your request. I believe Mr. Cellini's lawyers have
6 as well. Otherwise, we continue to get ready and
7 look forward to trial in June.

8 MR. SOROSKY: Your Honor, Sheldon Sorosky on
9 behalf of Rod Blagojevich.

10 We've received a copy of the government's
11 jury questionnaire. We have reviewed it among our
12 defense team, and shortly we will be prepared to
13 present to the government and Your Honor our
14 inclusion of questions to that questionnaire.

15 Also, Your Honor, the defense did file a
16 motion, our ex parte motion, and I will file it
17 electronically, but we were wondering in order to be
18 ready for trial, and that's our goal, and we are
19 making very good progress, if the Court would
20 indulge us in appointing three less senior lawyers
21 to our team, we have one of them here today.

22 THE COURT: I'm actually perfectly inclined
23 to do that and I appreciate that you said "less
24 senior" rather than "younger" --

25 MR. SOROSKY: Thank you.

1 THE COURT: Because I don't really care how
2 old the lawyer is, I do care about how experienced
3 they are and the costs involved. So that motion
4 will be granted.

:09AM

5 MR. WEBB: Thank you, Judge.

6 THE COURT: With respect to the
7 questionnaire, have you seen the defense's proposed
8 questionnaire?

:09AM

9 MR. NIEWOEHNER: We have received
10 Mr. Cellini's, Your Honor, yes.

:10AM

11 THE COURT: I'm obviously willing to allow
12 many more questions in the questionnaire than I
13 would orally. I believe the questionnaire should
14 also inform that the questionnaires themselves,
15 their specific answers to questionnaires will be
16 destroyed at the end of the case so that they
17 understand that.

:10AM

18 Secondly, there's a form of question that I
19 sometimes find troubling, not in the sense that
20 there's anything inherently improper about it, but
21 they tend to serve as kind of back-door substitutes
22 for other questions that might be asked and more
23 systematic testing. I once read a very long
24 questionnaire that a lawyer submitted, which had I
25 been in his shoes I would have been happy to have,

:11AM

:11AM
1 but what it was, in essence, was trying to get the
2 kind of data you would get with a full set of
3 psychological testing without the validity component
4 of psychological testing, and there may come a day
5 when we give the MMPI, and the wexler, and perhaps
6 the TAT to prospective jurors, but that day has yet
7 to come.

:12AM
8 And then there are some questions that
9 probably call for answers which would increase the
10 prospective juror's unease about the possibility of
11 jury service. In the two I take from the
12 government's proposal at 37 and 46, these are
13 examples only, from the defense 38 and 39, which are
14 addressed not so much to prospective juror's
15 attitude toward the case as a whole, but toward
16 their capacity to deliberate as a juror. I think a
17 single question more neutrally phrased would be
18 permissible.
19 :12AM

20 MR. SOROSKY: Just so we're clear --

21 THE COURT: What I'm asking you to do is to
22 consider and to confer with each other.
23 :13AM

24 MR. SOROSKY: Sure.
25 THE COURT: Because, by and large, it's the
one area of the case where both sides have precisely
the same kinds of questions they want answered, some
26 :13AM

1 like some answers better than others, but the
2 questions and the information tends to be equally
3 important to both sides.

4 An example of what I regard as kind of
5 invalid psychological inquiry are the defense
6 questions 51, 52, 53, I'm concerned about those
7 questions not because information of this sort would
8 not be valuable, it would be valuable the answers to
9 these questions, I'm concerned that the questions
10 are unduly intrusive and might be felt by a
11 prospective juror to be manipulative and conceivably
12 affect their confidence in the process. You might
13 find another avenue to get to this.

14 So it's not the subject matter that bothers
15 me, I think it could be done in a more graceful and
16 more diplomatic form. And because I believe
17 everybody has precisely the same interest in the
18 questions, you can probably get together and do a
19 decent job and minimize or eliminate whatever
20 disagreement there is, so that's where I stand on
21 that one.

22 MR. SOROSKY: Well, if I could ask one
23 question. Would the Court want, perhaps this is bad
24 English, but better questions on those topics in the
25 specific questions you refer to or no questions on

1 that topic?

2 THE COURT: I think what you have to do is
3 pay attention to the tone of the questions. Some of
4 them, the subject matter, as for example somebody's
5 overall opinion of a process or performance, it's
6 difficult to see the value of asking a question in
7 that format, and the results that you would like to
8 to get from that are unlikely to be reliable for
9 your own purposes.

10 :16AM So I don't mind the probing that's being done
11 in this, I am concerned about, one, how effective it
12 will be, and two, whether it creates barriers,
13 unjustifiable barriers to jury service by citizens.
14 So that's where I am on that. And I do not
15 anticipate you'll wind up with much disagreement.

16 :17AM I'm thinking we'll have a longer status this
17 next time. What about November 16th? Is that okay
18 with everybody?

19 MR. SCHAR: Yes, sir.

20 :18AM MR. WEBB: Yes, your Honor.

21 MR. SOROSKY: That's fine.

22 THE COURT: Time will continue to be excluded
23 to allow the defendants to prepare for the case.

24 MR. SOROSKY: Is that 11:00 o'clock?

25 :18AM THE COURT: 11:00 o'clock.

1 MR. SOROSKY: November 16th.

2 MR. ACKERMAN: There is one matter if we
3 could take it up at sidebar with the court reporter,
4 please?

:18AM

5 THE COURT: That would be fine, but is there
6 anything that is not at sidebar?

:18AM

7 MR. SCHAR: The only other question, Judge, I
8 had, when you say a longer status is there anything
9 the government should be prepared to address at that
10 time?

:18AM

11 THE COURT: No, I just think that obviously,
12 as usually happens in these cases, some internal
13 ground rules have been worked out amongst the
14 parties and that's fine with me.

:26AM

15 MR. SCHAR: Very good, Judge.

16 THE COURT: Sidebar.

17 (Proceedings heard at sidebar on the record.)

:26AM

18 MR. ACKERMAN: If the Court please, Friday we
19 caused to be electronically filed based on
20 conversations with the government's tape filter team
21 a position paper by the former governor. His
22 position, and I believe it's sealed under 182, his
23 position is without waiving the presentation of a
24 subsequent data of privileges if they are
25 appropriate, or challenges to 2518, et cetera, he

1 has no objection to having the filter team convey a
2 series of tapes to the trial team. His pleading
3 includes a requested court defer the providing from
4 the filter to the trial team so that others who
5 might be impacted by those tapes may have the
6 opportunity to challenge our position or take
7 whatever position they want to take.

8 The government filter team was going to
9 provide the trial team with those tapes by the end
10 of this week.

11 THE COURT: If I had not been in this
12 business for a while, I would never have understood
13 the particularly opaque comment, but I do understand
14 it.

15 MR. ACKERMAN: Yes. Thank you.

16 MR. SCHAR: Judge, I'll try to be less
17 opaque. If Mr. Blagojevich doesn't have an
18 objection, and as we understand the Bigelow ruling,
19 I'm not sure what objection he would necessarily
20 have with the exception of private attorney-client
21 conversations, then there's really nothing to
22 litigate. I don't know if someone would try to
23 intervene the privilege to the extent it ever
24 existed under Bigelow, which is the long Seventh
25 Circuit, then the only person who arguably could

1 ever have the privilege would be Mr. Blagojevich.
2 Since he is not objecting, then I'm not sure how
3 anyone else is even going to know to intervene or
4 what it is they would intervene on or they don't
:26AM 5 have access to any of the conversations to
6 intervene, nor would they have a right I think.

7 So it seems as if the objection that would be
8 lodged, we understood the filing to be exactly that,
9 there was no objection as to the conversations
:26AM 10 specifically related to conversations between
11 Mr. Blagojevich and general counsel A, I don't think
12 there's anything else Your Honor would actually have
13 to rule on at this point or opine on.

14 THE COURT: I think what Mr. Ackerman is
:26AM 15 doing is attempting to limit whatever waiver
16 argument --

17 MR. ACKERMAN: That is a fair assessment,
18 Your Honor.

19 THE COURT: -- that you want to make. And to
20 the extent that you can preserve that, he is
21 preserving it. It is possible that you are dealing
22 with an objection that cannot under law be
23 preserved, and if that's the case then that's the
24 case. But he's preserving his right to object, if
25 it is possible to do so, to any argument against

1 waiver that is not inconsistent with the basic act
2 of not objecting, which is what he's doing.

3 MR. ACKERMAN: The non-objection is from
4 filter to trial team, not beyond that.

5 :26AM THE COURT: Yeah. And which is what I
6 understood.

7 MR. ACKERMAN: Yes.

8 THE COURT: And if he is able to do that,
9 legally able to do that, then he's preserving it.
10 It's possible that he's not legally able to do that,
11 but probably he wants to save himself and you and I
12 an exercise in going through precisely what the
13 limits of waiver are unless we have to, and that's
14 reasonable.

15 :26AM MR. SCHAR: Judge, we understand that the
16 filter team, based on his position, may pass the
17 conversations to the trial team. To the extent that
18 there are evidentiary arguments to be made down the
19 road if at any point the government, you know,
20 chooses to attempt to use any of those
21 conversations, then I understand we can address the
22 issue of whether or not this waiver is a waiver that
23 dooms any further argument in that regard.

24 THE COURT: Precisely. Precisely.
25 :26AM Okay? Thanks.

1 MR. NIEWOEHNER: But I think to the second
2 point, I don't think there is any need to delay to
3 let any other impacted party to intervene because
4 other than the only two individuals that the
:26AM
5 government is aware of not present at the table over
6 a situation, I mean, one, Mr. Sorosky personally, I
7 suppose, and two, general counsel A, two lawyers who
8 were intercepted, and I don't think at this point
9 other than have standing, they don't have standing
:26AM
10 to object to what the client who holds the privilege
11 can do.

12 THE COURT: which is your way of telling me
13 that if there is a problem, it's a very small one.

14 MR. NIEWOEHNER: I think so. I don't think
15 there is any reason to delay the disclosure.
:26AM

16 MR. ACKERMAN: When the trial team gets the
17 tapes, I think they will find that other individuals
18 may well have standing to make similar or another
19 challenge.

20 THE COURT: which is fine. Which is fine.
21 If they have standing, they have standing.

22 MR. ACKERMAN: Thank you, Judge.

23 (Proceedings resumed within the hearing of the
24 jury.)

25 THE COURT: Counsel, anything further?

1 MR. SCHAR: No, Your Honor.

2 MR. SOROSKY: No, Your Honor.

3 THE COURT: See you in November.

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5 (which concluded the proceedings had on this
6 date in the above entitled cause.)

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5 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
6 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
7 MATTER

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10 /s/Blanca I. Lara

date

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Blanca I. Lara

Date